

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
FIRM FIXED PRICE (FFP) CONTRACT TYPE
SUPPLEMENTAL PROVISIONS
October 31, 2012
Revision 2

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DEFINITIONS

Whenever used in this document, the following definitions shall apply unless the content indicates otherwise.

Authorized Procurement Representative – The term “authorized procurement representative” shall be a person with authority to enter into and administer Subcontracts and make related determinations and findings. These individuals are identified with the associated authority in the body of the Subcontract.

Buyer’s Technical Representative (BTR) – The term “Buyer’s Technical Representative (BTR)” means the individual responsible for providing technical direction to the SUBCONTRACTOR. The BTR does not possess any explicit, apparent or implied authority to modify Subcontract terms and conditions.

BUYER – The term “BUYER” means Washington River Protection Solutions, LLC (WRPS).

Government – The term “Government” shall mean the United States of America and includes the U.S. Department of Energy (DOE) Office of River Protection (ORP), or any duly authorized representative thereof, including the BUYER’s Administrative Contracting Officer (ACO).

Lower-Tier Subcontractors - The term “lower-tier Subcontractors” refers to companies or individuals with whom the SUBCONTRACTOR has purchase orders, subcontracts and rental agreements for materials or equipment, and other services not performed directly by the SUBCONTRACTOR under this Subcontract.

SUBCONTRACTOR – The term SUBCONTRACTOR refers to the company, person or organization, including all lower-tier Subcontractors, performing Work under this Subcontract.

Subcontract – The term Subcontract shall mean this Subcontract or Purchase Order between the BUYER and the SUBCONTRACTOR including its terms, conditions, clauses, provisions, written direction and instructions, releases, and documents.

Work – The term “Work” includes all material, labor, tools, and all appliances, machinery, and transportation, necessary to perform and complete the Subcontract’s requirements, and such additional items not specifically indicated or described that can be reasonably inferred as required to complete the Subcontract.

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ARTICLE 1.0 CONTRACT TYPE

This is a Firm Fixed Price (FFP) contract type, which provides for a price that is not subject to any adjustment on the basis of the cost experience in performing the Subcontract, unless a supportable change request is incorporated per the provisions of this Subcontract agreement. This Subcontract places full responsibility upon the SUBCONTRACTOR for all costs and resulting profit or loss.

ARTICLE 2.0 ORDER OF PRECEDENCE

In the event of a discrepancy among any of the Subcontract terms, conditions, clauses, provisions, written direction and instructions, and documents (collectively, the 'Subcontract'), the following order of precedence shall govern resolution: (i) authorized procurement representative's written Subcontract, amendments, directions, and instructions; (ii) Special Provisions; (iii) General Provisions; (iv) Supplemental Provisions, (v) Statement of Work ('SOW'); (vi) Technical Specifications; and (vi) Drawings.

Nothing recited above shall be construed as superseding or deleting any applicable statute, rule, ordinance, or regulation (collectively, the 'Laws'). In the event of a conflict with Laws, the specific conflicting term of the Subcontract shall be considered null and without effect, Laws shall govern. All remaining terms unaffected by said Laws should continue in force.

ARTICLE 3.0 TERMS OF PAYMENT

The following process shall be used on all invoices submitted to the BUYER. Failure to comply may result in delayed payment or returned invoice.

3.1 General Invoice Requirements

- A. Invoice Submission Requirements Original invoices and supporting documentation shall be submitted no more than once a calendar month to the BUYER's Accounts Payable organization at the address below:

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
Accounts Payable/Mail Stop: H6-09
P.O. Box 850
Richland, WA 99352
Email electronic invoices to: WRPSAPINVOICES@rl.gov.

Submittal of an invoice constitutes the SUBCONTRACTOR's certification that the Work has been provided, and the invoiced amounts are in accordance with the Subcontract provisions.

- B. Invoice Payment Terms: The SUBCONTRACTOR shall prepare all invoices in a form satisfactory to and approved by the BUYER's authorized procurement representative. Except to the extent expressly stated elsewhere in this Subcontract, the invoice is payable thirty (30) calendar days after receipt by the BUYER of a properly marked and submitted invoice. Discounts are expected for earlier payments and shall be specifically incorporated in the Subcontract. All unit pricing and payments made shall be in United States dollars only, in the forms of cash, check or electronic transfer as may be agreed upon. Invoices may be submitted electronically, if in an acceptable format. All invoice requirements still apply to electronic invoices.
- C. Minimum Invoice Requirements: The invoice shall comply with following requirements
- Invoices must be submitted in a format that reconciles to the Subcontract's Compensation (Billing) Schedule.
 - Each Subcontract must be invoiced separately.
 - The invoice must clearly & legibly identify the SUBCONTRACTOR's name and invoice number, as well as Subcontract, Subcontract Release, or Purchase Order Number.
 - Each invoice shall include the name and telephone number of the SUBCONTRACTOR's representative available to respond to invoice questions.

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- Remittance will be made only to the remittance address on file for the SUBCONTRACTOR. Invoices from third parties or with different remittance instructions or addresses will not be processed.
- Questions or requests for exceptions shall be addressed to the BUYER's authorized procurement representative administering the Subcontract.
- Cash discounts will apply from the date a correct, properly supported invoice is received by the BUYER, or the date the goods are received, whichever is later.
- The SUBCONTRACTOR must indicate the quantity, unit description, and unit price for each item listed on an invoice.
- Invoices that include a total freight charge that is equal to or greater than one hundred dollars (\$100) must include a copy of the freight bill. If the carrier is UPS, the SUBCONTRACTOR must provide the weight, quantity, and shipping point.

3.2 Rejection of Invoices

Any invoice submitted, which fails to comply with the terms of this Subcontract, including the requirements of form and documentation, may be returned to the SUBCONTRACTOR. Any costs associated with the resubmission of a proper invoice shall be to the SUBCONTRACTOR's account. Final payment shall not relieve the SUBCONTRACTOR of any obligation under this Subcontract.

3.3 Withholding Invoice Payments

The BUYER may, at its sole discretion, withhold payment due to, but not limited to, the following reasons:

- Substandard work or delays in the Work not corrected promptly.
- Evidence that a claim has been or will be filed against the SUBCONTRACTOR.
- Evidence that lower-tier Subcontractors have not been properly paid.
- Failure to provide accrual reports by the 16th of each month as specified in the Subcontract provisions

3.4 Taxes

The SUBCONTRACTOR shall collect the applicable Washington State sales or use tax from the BUYER unless the SUBCONTRACTOR obtains a Direct Pay Permit from the BUYER's authorized procurement representative. All other Federal, State, county, municipal or other taxes not excluded by the Washington State Department of Revenue Direct Pay Permit must be included in the Subcontract amount. If as a result of this Subcontract, the SUBCONTRACTOR becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall take such tax credit and assign such tax credit to the BUYER. If the SUBCONTRACTOR applies for the Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall notify the BUYER's authorized procurement representative. The SUBCONTRACTOR shall fully cooperate with the BUYER in any tax audits, tax assessment reviews, or tax challenges.

3.5 Right to Offset

The BUYER, without waiver or limitation of any rights or remedies of the BUYER, shall be entitled from time to time to deduct from any amounts due or owing by the BUYER to the SUBCONTRACTOR in connection with this Subcontract (or any other Subcontract with the BUYER), any and all amounts owed by the SUBCONTRACTOR to the BUYER or the Government in connection with this Subcontract.

3.6 Interest Payment

No interest is payable to the SUBCONTRACTOR for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment, and then only in accordance with the terms of the judgment.

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3.7 Accruals

If the BUYER's authorized procurement representative requests accrual information, the SUBCONTRACTOR shall provide accruals monthly for the Subcontract's complete performance period to the BUYER's Accounts Payable organization. This shall be an estimate of the total billable cost from inception of the Subcontract through the current calendar month end. This information must be provided electronically between the 12th and the 16th of each month using the login information contained in the SUBCONTRACTOR's confirmation email when the SUBCONTRACTOR completed its initial vendor registration with the BUYER. Accruals are submitted through the Vendor Registration System at <http://www5.hanford.gov/vendreg/>. Click on the accruals tab at the top of the screen and enter the current cost to date amount for the subcontract or release in the appropriate space. If you experience any technical difficulties, please contact us at wrps_procurement@rl.gov. Alternative methods are email, fax, or mail and must be submitted by the 16th of each month to the following address.

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
ATTN: Accounts Payable / MSIN H6-09
P.O. Box 850
Richland, WA 99352
Email: awrps@rl.gov
Fax: (509) 372-8036

Monthly SUBCONTRACTOR cost to date forms can be obtained at the following link -- [Subcontractor Cost to Date Form](#).

Accrual data must be provided for each Subcontract or Subcontract release until all SUBCONTRACTOR invoices are received and Work is complete.

3.8 Final Payment

Upon completion of the Work, the SUBCONTRACTOR shall notify the BUYER's authorized procurement representative, in writing that the Work is complete and that final payment is due. The final invoice shall be clearly marked "FINAL PAYMENT" and submitted for reimbursement after completion and acceptance of Work by the BUYER and compliance by the SUBCONTRACTOR with all terms of this Subcontract. The final invoice shall be supported by all requested certifications and releases needed to close out the Subcontract including, but not limited to, the "Subcontractor Release of Claims." If the Work has been completed in accordance with this Subcontract, final payment will be made in accordance with the terms of this Subcontract. Final Payment shall not relieve the SUBCONTRACTOR of any obligation under this Subcontract.

ARTICLE 4.0 WARRANTY

The SUBCONTRACTOR warrants that all supplies and services provided under this Subcontract shall conform to the Statement of Work and/or specification included in this Subcontract. The SUBCONTRACTOR further warrants that all supplies provided as part of the Work shall be new, not refurbished or reconditioned; preserved, packaged, marked and prepared for shipment in a manner conforming to the requirements of applicable law and regulation and this Subcontract; and of an even kind, quality and quantity within each unit and among all units.

These warranty obligations shall survive for one (1) year after acceptance of the supplies or the completion of the Work performance hereunder unless a longer warranty period is called for in any writing including, without limitation, specifications, drawings or proposals furnished by or to the BUYER. The BUYER shall notify the SUBCONTRACTOR of any warranty claim within thirty (30) days after discovering the basis to raise such claim.

The SUBCONTRACTOR shall bear all costs and risk for correction or replacement of defective supplies or services, and in the case of supplies, for the cost of return of conforming supplies to the BUYER. Any of the supplies or parts thereof, corrected or furnished in replacement under this warranty provision, shall also be subject to the terms of this paragraph to the same extent as the supplies initially delivered. If replacement or correction is not completed promptly after notice of the defect or if a cure does not appear feasible, the BUYER shall have the right to either (i) obtain equivalent supplies or services from other sources (or to provide such supplies or services from internal sources) and to charge the cost thereof to the SUBCONTRACTOR or (ii) demand

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a refund of the funds paid by the BUYER for the defective supplies or services. At the BUYER's authorized procurement representative's request, the SUBCONTRACTOR shall provide a schedule for completing any proposed cure for defective supplies or services. Failure to provide a schedule within ten (10) working days shall be deemed grounds for the BUYER to exercise its rights under this provision.

If the SUBCONTRACTOR disputes the BUYER's warranty claim, the SUBCONTRACTOR shall nevertheless proceed to correct or replace the defective supplies or services. In the event it is later determined that the supplies or services were not defective, the BUYER shall equitably adjust the amount paid or to be paid under the Subcontract to compensate the SUBCONTRACTOR for the additional supplies or services provided, subject to offset for any conforming supplies returned by the BUYER.

The SUBCONTRACTOR shall provide instructions for pick up or disposal of defective supplies. Notwithstanding the provision entitled "Final Acceptance" hereof, title to, and risk of loss of, defective supplies that are returned for replacement or refund shall revert to the SUBCONTRACTOR upon notice of the defect. If the SUBCONTRACTOR fails to furnish timely disposition instructions, the BUYER may dispose of the defective supplies for the SUBCONTRACTOR's account in a reasonable manner. The BUYER is entitled to reimbursement from the SUBCONTRACTOR, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the defective supplies, as well as for excess costs incurred or to be incurred as a result of the breach of warranty. The rights and remedies of the BUYER provided in this paragraph are in addition to and do not limit any rights afforded to the BUYER by applicable law or any other term of this Subcontract.

Without limiting the SUBCONTRACTOR's liability under the warranties set out above, the SUBCONTRACTOR shall assign to the BUYER all manufacturer's warranties for supplies provided to the BUYER or other property acquired by the SUBCONTRACTOR at the BUYER's expense to which the BUYER takes title under the provision entitled "Final Acceptance" in the BUYER's general provisions.

ARTICLE 5.0 SUPPLEMENTAL TERMS AND CONDITIONS

General Intent: This agreement is subject to the terms and conditions of BUYER's Prime Contract Number DE-AC27-08RV14800. The general intent of these provisions is to incorporate into the purchase order or Subcontract all required Federal Acquisition Regulation (FAR) flow down clauses, and any other State or Federally-mandated Subcontract clauses, which are required to be so incorporated either by the FAR, BUYER's Prime Contract or the applicable State or Federal law.

To reference the cited FAR flow down clauses, the following link is provided -- [Hill Air Force Base FAR Site](#).

Substitution of the Parties: Wherever required to make any FAR clause incorporated herein meaningful, the term "Contractor" shall be read "Subcontractor," and the term "Government" or "Contracting Officer" shall be read "BUYER."

Specific Incorporated Clauses. Without in any way limiting, the following FAR clauses are hereby specifically incorporated herein by reference with the same force and effect as if they were given in full text.

5.1 Federal Acquisition Regulation (48 CFR Chapter 1) Clauses and Department of Energy Acquisition Regulation (48 CFR Chapter 9) Clauses.

Applicable to all orders:

- | | | |
|----|--------------|-----------------------------------|
| 1. | FAR 52.201 | Definitions (Jul 2004) |
| 2. | FAR 52.211-5 | Material Requirements (Aug 2000) |
| 3. | FAR 52.246-2 | Inspection of Supplies (Aug 1996) |
| 4. | FAR 52.246-4 | Inspection of Services (Aug 1996) |